

RECEIVED # 180
 AMOUNT \$ 180
 SUMMONS ISSUED YES
 LOCAL RULE 4.1 YES
 WAIVER FORM YES
 MCF ISSUED YES
 BY DPTY. CLK. YES
 DATE 12-23-03

UNITED STATES DISTRICT COURT
 DISTRICT OF MASSACHUSETTS

FILED
 CLERK'S OFFICE

2003 DEC 23 P 12:17

D.N. KELLEY & SON, INC.,

Plaintiff,

vs.

F/V RESILIENCE (*ex F/V BULLWINKLE*):
 (O.N. No. 660487), her engines, tackle, apparel,
 appurtenances, etc., *in rem*,

Defendant.

03 12593 RWZ

CIVIL ACTION NO.

MAGISTRATE JUDGE John

VERIFIED COMPLAINT
 IN ADMIRALTY

NOW COMES, plaintiff, D.N. KELLY & SON, INC., by its attorney, complaining of the above-named defendant, proceeds *in rem* against the F/V RESILIENCE (*ex F/V BULLWINKLE*) (O.N. No. 660487), her engines, tackle, apparel, appurtenances, fishing licenses, fishing history, to enforce a maritime lien against said vessel, and alleges, upon information and belief, as follows:

The Parties

1. Plaintiff, D.N. KELLEY & SON, INC., (hereinafter referred to as "D.N. KELLEY"), is a corporation duly organized and existing under the laws of the State of Massachusetts, with its principal place of business located at 32 Water Street, Fairhaven, Massachusetts. At all time material hereto, D.N. KELLEY did, and still does, business as a marine repair and storage facility and holds a valid maritime lien for "necessaries" upon the F/V RESILIENCE (*ex F/V BULLWINKLE*)(O.N. No. 660487)(hereinafter referred to as the "Vessel").
2. Defendant Vessel is a commercial fishing vessel that, upon information and belief, is owned by Mr WAYNE E. FRYE, JR., of 60 Seaview Ave, Fairhaven, Massachusetts

(hereinafter referred to as "FRYE") and documented under the laws of the United States, bearing Official Number 660487. The Vessel being a steel hulled vessel built in 1983 by Eldridge Welding Company of Brewster, Massachusetts, is now located ashore at an upland storage facility at D.N. KELLEY in Fairhaven, Massachusetts, and during the pendency of this action, will be within the jurisdiction of this Honorable Court.

Jurisdiction

3. This action is one of which the district courts have original jurisdiction under the provisions of Title 28, United States Code, section 1333 in that it is a civil action arising under Title 46, United States Code, sections 31341, *et seq*, more commonly referred to as the Federal Maritime Lien Act, and the general maritime law of the United States, and is otherwise an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. Plaintiff specifically invokes the special relief provided by Rule C of the Supplemental Rules for Certain Admiralty and Maritime Claims for the *in rem* arrest of defendant Vessel.

Factual Allegations

4. On or about June 2003, at the same time that FRYE took title to the vessel from her previous owner, FRYE entered into an agreement with D.N. KELLEY whereby plaintiff agreed to allow the vessel to be berthed at its facility in Fairhaven, Massachusetts. A short time thereafter, the plaintiff and FRYE entered into another agreement whereby the plaintiff was to perform certain work and furnish certain labor and materials in connection with the modification and repair of the Vessel. At the time of making both of the above agreements, the vessel was in navigation. Additionally, the plaintiff and FRYE also agreed that laydays would be charged by the plaintiff for storage of the vessel.

5. Pursuant to said agreement, upon the order and request of FRYE, D.N. KELLEY furnished certain services and repairs and supplied certain materials and supplies to the Vessel. D.N. KELLEY has also stored the vessel on land as requested by FRYE.
6. FRYE has failed, neglected, and refused to pay for the fair and reasonable value of goods and services provided by D.N. KELLEY which are now due and owing to plaintiff on account thereof.
7. D.N. KELLEY has performed all conditions on its part to be performed under the aforesaid agreement.
8. By reason of the foregoing premises, D.N. KELLEY has sustained damages in the principal amount of \$16,143.45, excluding interest, as nearly as the same can now be estimated, no part of which has been paid although duly demanded.

Cause of Action

(Enforcement of Maritime Lien for "Necessaries")

9. D.N. KELLEY incorporates herein by reference the allegations contained in Paragraphs 1 through 8 above with the same force and effect as if set forth at length herein.
10. The services, repairs, materials, and supplies furnished and supplied by D.N. KELLEY to the Vessel in connection with her modification, repair, and storage entitled plaintiff to a maritime lien for "necessaries" against the Vessel.

WHEREFORE, plaintiff prays that this Honorable Court adjudge as follows:

1. That *in rem* process issue in due form of law, according the practice of this Honorable Court in matters of admiralty and maritime jurisdiction, may issue against the whole of the Vessel, her engines, tackle, apparel, appurtenances, fishing licences and fishing history, pursuant to Rule C of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil

Procedure;

2. That all persons having or claiming to have any interest therein be cited to appear and answer under oath, all and singular the matter aforesaid;
3. That plaintiff's claim be adjudged a valid and enforceable maritime lien against the whole of the Vessel, her engines, tackle, apparel, appurtenances, etc., and an *in rem* judgment enter in its favor against the Vessel for the full amount of its liquidated damages, together with interest, costs, expenses of collection, including reasonable attorneys' fees, and other damages which may be shown at trial;
4. That the Vessel be condemned and sold to satisfy plaintiff's judgment; and
5. That plaintiff have such other and further relief as this Honorable Court and Justice may deem just and appropriate under the circumstances.

Dated: December 16, 2003

Respectfully submitted,

D.N. KELLEY & SON, INC.,
By its attorney,

SAUNDERS & MICHAUD, LLP



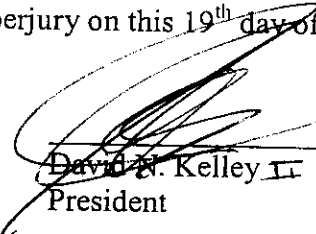
Andrew B. Saunders
700 Pleasant Street
New Bedford, MA 02740
Tel. (508) 999-0600
Fax (508) 999-5400
BBO # 560645

Verification

David N. Kelley, being duly sworn, deposes and says that:

I am President of D.N. KELLEY & SON, INC., plaintiff herein. I have read the foregoing Verified Complaint and I know the contents thereof and the same are true to the best of my knowledge, information and belief. As to the matters therein stated to be upon information and belief, I believe them to be true. The sources of my information and the grounds for my beliefs are the financial statements and business records of the company, as well as my own involvement in negotiating the agreement with Mr. Wayne E. Frye, Jr., and attempting to collect the indebtedness owed.

Signed under the pains and penalties of perjury on this 19th day of December, 2003.



David N. Kelley, Jr.
President

Acknowledgment

STATE OF MASSACHUSETTS:
COUNTY OF BRISTOL, ss.:

Fairhaven, MA

Then appeared before me the above-named David N. Kelley, known to me or shown to me to be acting in the capacity claimed and who, being duly sworn, stated that he read the foregoing document, that he was authorized to execute said document, and that he executed said document as the free act and deed of said corporation on the 19th day of December, 2003.


Notary Public (SEAL)
My Commission Expires:
12/20/03

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

D. N. Kelley + Son, Inc

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF

(EXCEPT IN U.S. PLAINTIFF CASES)

Bristol

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Andrew B. Saunders
SAUNDERS + MICHAEL LLP
700 Pleasant St New Bedford MA 02740

DEFENDANTS

7/1 Resilience - In Rem

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

Bristol

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

03

ATTORNEYS (IF KNOWN)

12593 RWZ

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

X Admiralty

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 881 HIA (1395ff) <input type="checkbox"/> 882 Black Lung (923) <input type="checkbox"/> 883 DIWC/DIWW (405(g)) <input type="checkbox"/> 884 SSID Title XVI <input type="checkbox"/> 885 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 670 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7809	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 881 Agricultural Acts <input type="checkbox"/> 882 Economic Stabilization Act <input type="checkbox"/> 883 Environmental Matters <input type="checkbox"/> 884 Energy Allocation Act <input type="checkbox"/> 885 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 990 Other Statutory Actions

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

In Rem Arrest of Defendant Vessel for Non Payment of Necessaries

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 16143.00

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ YES ☒ NO

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE

DOCKET NUMBER

DATE

12/23/03

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) D.N. Kelkey + Son, Inc
v. 7/v Retalience (In Rem)
2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).
- ☒ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.
4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?
- YES ☒ NO
5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)
- YES ☒ NO
- IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?
- YES ☒ NO
6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?
- YES ☒ NO
7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).
- ☒ YES ☐ NO
- A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?
- ☒ EASTERN DIVISION ☐ CENTRAL DIVISION ☐ WESTERN DIVISION
- B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?
- ☒ EASTERN DIVISION ☐ CENTRAL DIVISION ☐ WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Andrew B. Saunders

ADDRESS 700 Pleasant St New Bedford MA 02740

TELEPHONE NO. 508 999-0600